IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.268 OF 2007

The Commissioner of Income-tax
Aayakar Bhavan, Near Holi Cross
High School, Cantonment,Aurangabad. ..Appellant.

V/s.

Kada Sahakari Sakhar Karkhana Ltd.
Kada, Tal. Ashti, Dist. Beed. ..Respondent.

Mr.B.M.Chatterjee with Mrs.P.P.Bhosale for appellant.

Mr.S.N.Inamdar with A.K.Jasani for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 17TH SEPTEMBER, 2007.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. This appeal is filed by Commissioner of Income Tax under section 260 A of the Income Tax Act, 1961 against the order of the ITAT dated 19/12/2005 relating to the assessment year 1999-00.

2. By consent, the appeal is admitted on the following reframed questions of law:-

1. Whether the Appellate Tribunal was right in law in holding that provisions of Section 40A(2) (a) are not applicable to a co-operative Society ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the additional payment over and above the statutory minimum price (SMP) was cane price and not diversion of profit and as such allowable as business expenditure under section

37(1) of the Income Tax Act, 1961 ?

3. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that advances paid to harvesting and transporting contractors was in the nature of business interest of the assessee society and thereby deleting the disallowance of interest part, even though such advance was not made in the normal course of business and was made without any specific contractual obligation and out of borrowings on which assessee is giving huge interest to financial institutions. Thus, it was nothing but a diversion of borrowed funds for non business purpose ?

3. Counsel on both the sides agree that the first two questions of law are covered by the decision of this Court in the case of C.I.T. V/s. Manjara Shetkari Sahakari Sakhar Karkhana Ltd. in Income Tax Appeal No.318 of 2007 decided on 14th August, 2007 in favour of the assessee and against the revenue.

4. Counsel on both the sides agree that the question No.3 is answered against the revenue and in favour of the assessee by the decision of this Court in the case of Commissioner of Income Tax V/s. Samarth Sahakari Sakhar Karkhana Ltd. in Income Tax Appeal No. 273 of 2007 decided on 17th September, 2007. Accordingly, all the questions are answered in favour of the assessee and against the revenue.

5. Appeal disposed of accordingly with no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**